

EXHIBIT 3

IN THE
COURT OF APPEALS OF VIRGINIA

Case Nos. 1855-22-2, 0876-23-2, 0940-23-2, & 0953-23-2

J.M. and S.M.,

v.

A.A. and F.A.,

Response to Notice of Supplemental Authority

On Interlocutory Appeal from the
Circuit Court of Fluvanna County (Case No. CL22000186-00)

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Under Rule 5A:4A, J.M. and S.M. respond to A.A. and F.A.’s Notice of Supplemental Authority (“Notice”). Although A.A. and F.A. take no definitive position on the April 2023 amendments to § 17.1-405(B),¹ they suggest this Court might lack jurisdiction to “hear the M.s’ pending petitions for interlocutory appeal.” Notice at 1 (July 14, 2023). Jurisdictional arguments are best reserved for merits briefs rather than notices, but regardless, the Court has jurisdiction.

In context, the categories described in § 17.1-405(B) make clear the amendments cover only domestic relations matters arising from JDR court proceedings under *Title 20*, not adoption proceedings (or collateral attacks against adoption orders) under *Title 63.2*. All matters described in § 17.1-405(B) are found in Title 20. And the phrase “[c]ontrol or disposition of a minor child” appears only one other place in the Code: § 16.1-241(A), which establishes the JDR court’s jurisdiction.

Adoption proceedings and name changes, by contrast, are not domestic relations matters, and must be initiated in circuit court. Code § 63.2-1237. In *Rowland v. Shurbutt*, the Supreme Court held that, under a prior version of § 17.1-405, a proceeding to change a child’s name, while “obviously relat[ing] to a child, . . . does not involve the ‘control or disposition of a child.’” 259 Va. 305, 307

¹ A.A. and F.A. represent they discovered the amendment only recently; that’s curious considering J.M. and S.M. noted the amendment in their May 30, 2023 petition.

(2000).² The same commonsense reading controls here. Code § 17.1-405(B) does not bar interlocutory appeal of *any* order involving a child; it bars only interlocutory appeals of domestic relations proceedings under Title 20.

Even if the amendments applied to circuit court adoption proceedings, they would not foreclose appeal of the threshold issue under Code § 63.2-1216, which does not directly implicate the “control or disposition of a child,” though it likely would foreclose A.A. and F.A.’s requests for relief. Nor do the amendments apply retroactively to J.M. and S.M.’s December 2022 petition.

Dated: July 20, 2023

Respectfully submitted,

/s/ John S. Moran

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² The prior version also had a separate reference to adoption, which was not reinserted in the April 2023 amendment.

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2023, caused a true copy of the foregoing to be electronically filed with the Court using the VACES system in compliance with Rule 5:1B.

I further certify that on July 20, 2023, I caused a copy of the foregoing to be sent via electronic mail to the following:

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